

OFFICIAL TIME POLICY

PLANT PROTECTION AND QUARANTINE
EASTERN REGION

NEW YORK



United States
Department of
Agriculture

Animal and Plant
Health Inspection
Service

Plant Protection
and Quarantine

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Albany, NY
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Subject: Official Time for EEO Complaints

Date: February 18, 2000

To: Port Directors, New York
Work Unit Directors, New York

According to the Code of Federal Regulations, Section 1614.605(b), employees are entitled to a reasonable amount of official time to present subject complaints and to respond to agency requests for information. However, the employee and the agency should arrive at a mutual understanding for the amount of official time to be used **prior** to the employee's use of such time.

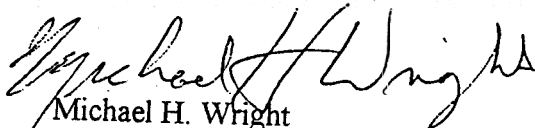
Enclosed please find a copy of the Equal Employment Opportunity Commission (EEOC) Management Directive 110, Chapter 6, which addresses granting official time to employees to prepare EEO complaints (VIII.C.). Please note that this regulation also covers complainant representatives who are themselves federal employees. In addition, I would like you to establish in your areas of responsibility a policy which addresses the following:

Managers should contact the APHIS Civil Rights Enforcement and Compliance (CREC) staff to speak to the specialist for PPQ in New York, Mr. Mark Quiming, 202-720-5415, to ensure that the employee does have a complaint and be apprised of the status of the complaint.

Employees must request official time **in advance** of the actual time requested. Such request **must** be in writing and the supervisor's approval or denial **must** be in writing. If the request is granted and more time is needed, requests for extensions **must** be in writing as well. The same applies to supervisory approval or denial.

A copy of all requests for official time **must be forwarded** to the CREC staff through office.

If you have any questions or need more information, please contact me or Mark at the telephone number listed above. In addition, please let me know when you have this policy established and provide me with any related documentation.


Michael H. Wright
State Plant Health Director

Enclosure

Cc:

Alfred S. Elder, Regional Director, Raleigh, NC (w/o enclosure)

✓ Anna P. Grayson, Director, Civil Rights Enforcement and Compliance (w/o enclosure)



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C. Official Time

Section 1614.605 provides that complainants are entitled to a representative of their choice during pre-complaint counseling and at all stages of the complaint process. Both the complainant and the representative, if they are employees of the agency where the complaint arose and was filed, are entitled to a reasonable amount of official time to present the complaint and to respond to agency requests for information, if otherwise on duty. § 1614.605(b). Former employees of an agency who initiate the EEO process concerning an adverse action relating to their prior employment with the agency are employees within the meaning of § 1614.605, and their representatives, if they are current employees of the agency, are entitled to official time. Witnesses who are federal employees, regardless of whether they are employed by the respondent agency or some other federal agency, shall be in a duty status when their presence is authorized or required by Commission or agency officials in connection with the complaint.

Reasonable Amount of Official Time

"Reasonable" is defined as whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to agency requests for information. The actual number of hours to which complainant and his/her representative are entitled will vary, depending on the nature and complexity of the complaint and considering the mission of the agency and the agency's need to have its employees available to perform their normal duties on a regular basis. The complainant and the agency should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time. Time spent commuting to and from home should not be included in official time computations

because all employees are required to commute to and from their federal employment on their own time.

2 Meeting and Hearing Time

Most of the time spent by complainants and their representatives during the processing of a typical complaint is spent in meetings and hearings with agency officials or with EEOC Administrative Judges. Whatever time is spent in such meetings and hearings is automatically deemed reasonable. Both the complainant and the representative are to be granted official time for the duration of such meetings or hearings and are in a duty status regardless of their tour of duty. If a complainant or representative has already worked a full week and must attend a hearing or meeting on an off day, that complainant or representative is entitled to official time, which may require that the agency pay overtime.

3 Preparation Time

Since presentation of a complaint involves preparation for meetings and hearings, as well as attendance at such meetings, conferences, and hearings, complainants and their representatives are also afforded a reasonable amount of official time, as defined above, to prepare for meetings and hearings. They are also to be afforded a reasonable amount of official time to prepare the formal complaint and any appeals that may be filed with the Commission, even though no meetings or hearings are involved. However, because investigations are conducted by agency or Commission personnel, the regulation does not envision large amounts of official time for preparation purposes. Consequently, "reasonable," with respect to preparation time (as opposed to time actually spent in meetings and hearings), is generally defined in terms of hours, not in terms of days, weeks, or months. Again, what is reasonable depends on the individual circumstances of each complaint.

4 Aggregate Time Spent on EEO Matters

The Commission considers it reasonable for agencies to expect their employees to spend most of their time doing the work for which they are employed. Therefore, an agency may restrict the overall hours of official time afforded to a representative, for both preparation purposes and for attendance at meetings and hearings, to a certain percentage of that representative's duty hours in any given month, quarter, or year. Such overall

restrictions would depend on the nature of the position occupied by the representative, the relationship of that position to the mission of the agency, and the degree of hardship imposed on the mission of the agency by the representative's absence from his/her normal duties. The amount of official time to be afforded to an employee for representational activities will vary with the circumstances.

Moreover, § 1614.605(c) provides that in cases where the representation of a complainant or agency would conflict with the official or collateral duties of the representative, the Commission or the agency may, after giving the representative an opportunity to respond, disqualify the representative. At all times, the complainant is responsible for proceeding with the complaint, regardless of whether s/he has a designated representative.

The Commission does not require agencies to provide official time to employee representatives who are representing complainants in cases against other federal agencies. However, the Commission encourages agencies to provide such official time.

5. Requesting Official Time

The agency must establish a process for deciding how much official time it will provide a complainant. Agencies further must inform complainants, their representatives, and others who may need official time, such as witnesses, of the process and how to claim or request official time.

6. Denial of Official Time

If the agency denies a request for official time, either in whole or in part, the agency must include a written statement in the complaint file noting the reasons for the denial. If the agency's denial of official time is made before the complaint is filed, the agency shall provide the complainant with a written explanation for the denial, which it will include in the complaint file if the complainant's subsequently files a complaint.

D. Duty Status/Tour of Duty

For purposes of these regulations, "duty status" means the complainant's or representative's normal hours of work.

It is expected that the agency will, to the extent practical, schedule meetings during the complainant's normal working hours and that agency officials shall provide official time for complainants and representatives to attend such meetings and hearings.

If meetings, conferences, and hearings are scheduled outside of the complainant's or the representative's normal work hours, agencies should adjust or rearrange the complainant's or representative's work schedule to coincide with such meetings or hearings, or grant compensatory time or official time to allow an approximately equivalent time off during normal hours of work. The selection of the appropriate method for making the complainant or representative available in any individual circumstance shall be within the discretion of the agency.

Any reasons for an agency's denial of official time should be fully documented and made a part of the complaint file.

Witnesses who are federal employees, regardless of their tour of duty and whether they are employed by the respondent agency or another federal agency, must be in a duty status when their presence is authorized or required by Commission or agency officials in connection with a complaint.

E. Use of Government Property

The complainant's or complainant's non-attorney representative's use of government property (copiers, telephones, word processors) must be authorized by the agency and must not cause undue disruption of agency operations.